

2005 DRAFTING REQUEST

Bill

Received: **01/04/2006**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Owens@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us
anne.sappenfield@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Self-defense

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/27/2006	jdyer 01/30/2006		_____			
/P1			rschluet 01/30/2006	_____	lnorthro 01/30/2006		
/1	mdsida 02/08/2006	jdyer 02/09/2006	pgreensl 02/09/2006	_____	sbasford 02/09/2006	lnorthro 02/09/2006	

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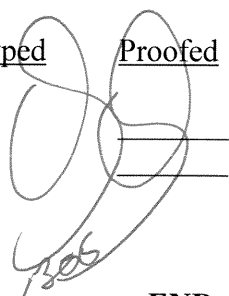
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/?	mdsida	PI 1/30 jld					

FE Sent For:

<END>

P/c from Anne S. — focus on home invasion provisions.

ENROLLED

2005 Legislature CS for CS for SB 436, 1st Engrossed (ntc)

1
2 An act relating to the protection of persons
3 and property; creating s. 776.013, F.S.;
4 authorizing a person to use force, including
5 deadly force, against an intruder or attacker
6 in a dwelling, residence, or vehicle under
7 specified circumstances; creating a presumption
8 that a reasonable fear of death or great bodily
9 harm exists under certain circumstances;
10 creating a presumption that a person acts with
11 the intent to use force or violence under
12 specified circumstances; providing definitions;
13 amending ss. 776.012 and 776.031, F.S.;
14 providing that a person is justified in using
15 deadly force under certain circumstances;
16 declaring that a person has no duty to retreat
17 and has the right to stand his or her ground
18 and meet force with force if the person is in a
19 place where he or she has a right to be and the
20 force is necessary to prevent death, great
21 bodily harm, or the commission of a forcible
22 felony; creating s. 776.032, F.S.; providing
23 immunity from criminal prosecution or civil
24 action for using deadly force; defining the
25 term "criminal prosecution"; authorizing a law
26 enforcement agency to investigate the use of
27 deadly force but prohibiting the agency from
28 arresting the person unless the agency
29 determines that there is probable cause that
30 the force the person used was unlawful;
31 providing for the award of attorney's fees,

ENROLLED

2005 Legislature CS for CS for SB 436, 1st Engrossed (ntc)

1 court costs, compensation for loss of income,
2 and other expenses to a defendant in a civil
3 suit who was immune from prosecution under this
4 section; providing an effective date.

5
6 WHEREAS, the Legislature finds that it is proper for
7 law-abiding people to protect themselves, their families, and
8 others from intruders and attackers without fear of
9 prosecution or civil action for acting in defense of
10 themselves and others, and

11 WHEREAS, the castle doctrine is a common-law doctrine
12 of ancient origins which declares that a person's home is his
13 or her castle, and

14 WHEREAS, Section 8 of Article I of the State
15 Constitution guarantees the right of the people to bear arms
16 in defense of themselves, and

17 WHEREAS, the persons residing in or visiting this state
18 have a right to expect to remain unmolested within their homes
19 or vehicles, and

20 WHEREAS, no person or victim of crime should be
21 required to surrender his or her personal safety to a
22 criminal, nor should a person or victim be required to
23 needlessly retreat in the face of intrusion or attack, NOW,
24 THEREFORE,

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 776.013, Florida Statutes, is
29 created to read:

30 776.013 Home protection; use of deadly force;
31 presumption of fear of death or great bodily harm.--

ENROLLED

2005 Legislature CS for CS for SB 436, 1st Engrossed (ntc)

1 (1) A person is presumed to have held a reasonable
2 fear of imminent peril of death or great bodily harm to
3 himself or herself or another when using defensive force that
4 is intended or likely to cause death or great bodily harm to
5 another if:

6 (a) The person against whom the defensive force was
7 used was in the process of unlawfully and forcefully entering,
8 or had unlawfully and forcibly entered, a dwelling, residence,
9 or occupied vehicle, or if that person had removed or was
10 attempting to remove another against that person's will from
11 the dwelling, residence, or occupied vehicle; and

12 (b) The person who uses defensive force knew or had
13 reason to believe that an unlawful and forcible entry or
14 unlawful and forcible act was occurring or had occurred.

15 (2) The presumption set forth in subsection (1) does
16 not apply if:

17 (a) The person against whom the defensive force is
18 used has the right to be in or is a lawful resident of the
19 dwelling, residence, or vehicle, such as an owner, lessee, or
20 titleholder, and there is not an injunction for protection
21 from domestic violence or a written pretrial supervision order
22 of no contact against that person; or

23 (b) The person or persons sought to be removed is a
24 child or grandchild, or is otherwise in the lawful custody or
25 under the lawful guardianship of, the person against whom the
26 defensive force is used; or

27 (c) The person who uses defensive force is engaged in
28 an unlawful activity or is using the dwelling, residence, or
29 occupied vehicle to further an unlawful activity; or

30 (d) The person against whom the defensive force is
31 used is a law enforcement officer, as defined in s.

1 943.10(14), who enters or attempts to enter a dwelling,
2 residence, or vehicle in the performance of his or her
3 official duties and the officer identified himself or herself
4 in accordance with any applicable law or the person using
5 force knew or reasonably should have known that the person
6 entering or attempting to enter was a law enforcement officer.

7 (3) A person who is not engaged in an unlawful
8 activity and who is attacked in any other place where he or
9 she has a right to be has no duty to retreat and has the right
10 to stand his or her ground and meet force with force,
11 including deadly force if he or she reasonably believes it is
12 necessary to do so to prevent death or great bodily harm to
13 himself or herself or another or to prevent the commission of
14 a forcible felony.

15 (4) A person who unlawfully and by force enters or
16 attempts to enter a person's dwelling, residence, or occupied
17 vehicle is presumed to be doing so with the intent to commit
18 an unlawful act involving force or violence.

19 (5) As used in this section, the term:

20 (a) "Dwelling" means a building or conveyance of any
21 kind, including any attached porch, whether the building or
22 conveyance is temporary or permanent, mobile or immobile,
23 which has a roof over it, including a tent, and is designed to
24 be occupied by people lodging therein at night.

25 (b) "Residence" means a dwelling in which a person
26 resides either temporarily or permanently or is visiting as an
27 invited guest.

28 (c) "Vehicle" means a conveyance of any kind, whether
29 or not motorized, which is designed to transport people or
30 property.

31

ENROLLED

2005 Legislature CS for CS for SB 436, 1st Engrossed (ntc)

1 Section 2. Section 776.012, Florida Statutes, is
2 amended to read:

3 776.012 Use of force in defense of person.--A person
4 is justified in using ~~the use of~~ force, except deadly force,
5 against another when and to the extent that the person
6 reasonably believes that such conduct is necessary to defend
7 himself or herself or another against ~~the such~~ other's
8 imminent use of unlawful force. However, ~~a the~~ person is
9 justified in the use of deadly force and does not have a duty
10 to retreat only if:

11 (a) He or she reasonably believes that such force is
12 necessary to prevent imminent death or great bodily harm to
13 himself or herself or another or to prevent the imminent
14 commission of a forcible felony; ~~or-~~

15 (b) Under those circumstances permitted pursuant to s.
16 776.013.

17 Section 3. Section 776.031, Florida Statutes, is
18 amended to read:

19 776.031 Use of force in defense of others.--A person
20 is justified in the use of force, except deadly force, against
21 another when and to the extent that the person reasonably
22 believes that such conduct is necessary to prevent or
23 terminate ~~the such~~ other's trespass on, or other tortious or
24 criminal interference with, either real property other than a
25 dwelling or personal property, lawfully in his or her
26 possession or in the possession of another who is a member of
27 his or her immediate family or household or of a person whose
28 property he or she has a legal duty to protect. However, the
29 person is justified in the use of deadly force only if he or
30 she reasonably believes that such force is necessary to
31 prevent the imminent commission of a forcible felony. A person

ENROLLED

2005 Legislature CS for CS for SB 436, 1st Engrossed (ntc)

1 does not have a duty to retreat if the person is in a place
2 where he or she has a right to be.

3 Section 4. Section 776.032, Florida Statutes, is
4 created to read:

5 776.032 Immunity from criminal prosecution and civil
6 action for justifiable use of force.--

7 (1) A person who uses force as permitted in s.
8 776.012, s. 776.013, or s. 776.031 is justified in using such
9 force and is immune from criminal prosecution and civil action
10 for the use of such force, unless the person against whom
11 force was used is a law enforcement officer, as defined in s.
12 943.10(14), who was acting in the performance of his or her
13 official duties and the officer identified himself or herself
14 in accordance with any applicable law or the person using
15 force knew or reasonably should have known that the person was
16 a law enforcement officer. As used in this subsection, the
17 term "criminal prosecution" includes arresting, detaining in
18 custody, and charging or prosecuting the defendant.

19 (2) A law enforcement agency may use standard
20 procedures for investigating the use of force as described in
21 subsection (1), but the agency may not arrest the person for
22 using force unless it determines that there is probable cause
23 that the force that was used was unlawful.

24 (3) The court shall award reasonable attorney's fees,
25 court costs, compensation for loss of income, and all expenses
26 incurred by the defendant in defense of any civil action
27 brought by a plaintiff if the court finds that the defendant
28 is immune from prosecution as provided in subsection (1).

29 Section 5. This act shall take effect October 1, 2005.
30
31

Anne S.
Keep civil
stuff out



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4324/P1

MGD:.....
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: the privilege of self-defense.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 939.48 (1m) of the statutes is created to read:

3 939.48 (1m) (a) If an actor intentionally used force that was intended or likely
4 to cause death or great bodily harm, the court shall presume that the actor
5 reasonably believed that the force was necessary to prevent imminent death or great
6 bodily harm to himself or herself if the actor makes such a claim under sub. (1) and
7 one of the following applies:

8 1. The person against whom the force was used was in the process of unlawfully
9 and forcibly entering the actor's residence, the actor was present in the residence,
10 and the actor knew or had reason to believe that an unlawful and forcible entry was
11 occurring.

SECTION 1

2. The person against whom the force was used was in the actor's residence after unlawfully and forcibly entering it, the actor was present in the residence, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the residence.

(b) The presumption described in par. (a) does not apply if any of the following applies:

1. The actor was engaged in an unlawful activity or was using his or her residence to further an unlawful activity at the time.

2. The person against whom the force was used was a peace officer who entered or attempted to enter the actor's residence in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The officer identified himself or herself to the actor before the force described in par. (a) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or attempting to enter his or her residence was a peace officer. ✓

(END)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4324/PS

MGD:jld:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Spoor

Regen

- 1 AN ACT *to create* 939.48 (1m) of the statutes; **relating to:** the privilege of
2 self-defense.

Analysis by the Legislative Reference Bureau

✓ analysis insert → This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 939.48 (1m) of the statutes is created to read:

4 939.48 (1m) (a) If an actor intentionally used force that was intended or likely
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6 reasonably believed that the force was necessary to prevent imminent death or great
7 bodily harm to himself or herself if the actor makes such a claim under sub. (1) and
8 one of the following applies:

- 9 1. The person against whom the force was used was in the process of unlawfully
10 and forcibly entering the actor's residence, the actor was present in the residence,

any ✓

1 and the actor knew or had reason to believe that an unlawful and forcible entry was
2 occurring.

3 2. The person against whom the force was used was in the actor's residence
4 after unlawfully and forcibly entering it, the actor was present in the residence, and
5 the actor knew or had reason to believe that the person had unlawfully and forcibly
6 entered the residence.

7 (b) The presumption described in par. (a) does not apply if any of the following
8 applies:

9 1. The actor was engaged in an unlawful activity or was using his or her
10 residence to further an unlawful activity at the time.

11 2. The person against whom the force was used was a peace officer who entered
12 or attempted to enter the actor's residence in the performance of his or her official
13 duties. This subdivision applies only if at least one of the following applies:

14 a. The officer identified himself or herself to the actor before the force described
15 in par. (a) was used by the actor.

16 b. The actor knew or reasonably should have known that the person entering
17 or attempting to enter his or her residence was a peace officer.

18 (END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4324/lins
MGD:.....

1

analysis INSERT

In general, a person who uses force in self-defense or in the defense of another person may not be convicted of a crime stemming from that use of force. This law applies only when: 1) the amount of force used is reasonable; and 2) the person uses that force to prevent or stop what he or she reasonably believes is an unlawful interference with himself or herself or another person (such as the crime of battery). Current law specifies that a person may use force that is intended or likely to cause the death of or great bodily harm to another individual only if the person reasonably believes that using such force is necessary to prevent the imminent death of or great bodily harm to himself or herself or another person.

Under this bill, if a person used defensive force that was intended or likely to cause death or great bodily harm, the court must presume that the person reasonably believed that the force was necessary to prevent death or great bodily harm if: 1) the individual against whom the force was used was in the process of unlawfully and forcibly entering (or had already unlawfully and forcefully entered) the residence of the person who used the force; 2) the person was present in that residence; and 3) the person knew or had reason to believe that an unlawful and forcible entry was occurring (or had occurred). This presumption, however, does not apply if: 1) the person who used the force was engaged in an unlawful activity or was using his or her residence to further an unlawful activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Northrop, Lori

From: Tesch, Becky
Sent: Thursday, February 09, 2006 11:11 AM
To: LRB.Legal
Subject: Draft Review: LRB 05-4324/1 Topic: Self-defense

Please Jacket LRB 05-4324/1 for the ASSEMBLY.